

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

FREDRICK JAMES DAVIS,

Plaintiff,

vs.

ROBERT SMITH,

Defendant.

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Case No. 4:09-CV-1045 CDP

**MEMORANDUM AND ORDER**

This matter is before the Court on plaintiff's motion to proceed in forma pauperis [Doc. #2]. Plaintiff, a prisoner, has filed at least three previous cases that were dismissed as frivolous, malicious, or for failure to state a claim.<sup>1</sup> Under 28 U.S.C. § 1915(g), therefore, the Court may not grant the motion unless plaintiff was "under imminent danger of serious physical injury" at the time he filed the complaint.

After reviewing the complaint, the Court finds no allegations indicating that plaintiff was in imminent danger of serious physical injury when he signed his complaint on June 30, 2009. Plaintiff's allegations concern an incident that occurred on June 25, 2009, when a transport officer allegedly assaulted him, thereby causing physical injuries to plaintiff's mouth and teeth. Plaintiff is seeking monetary damages for the officer's use of excessive force on June 25. As a result, the Court will deny the motion and will dismiss this action without prejudice to refile as a fully paid complaint.

Accordingly,

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<sup>1</sup>See Davis v. State of Missouri, No. 4:08-CV-1481 DDN (E.D. Mo.); Davis v. State of Missouri, No. 4:08-CV-1927 CAS (E.D. Mo.); Davis v. Mitchell, No. 4:09-CV-439 RWS (E.D. Mo.).

**IT IS HEREBY ORDERED** that plaintiff's motion to proceed in forma pauperis [Doc. #2] is **DENIED**.

**IT IS FURTHER ORDERED** that plaintiff's motion for appointment of counsel [Doc. #4] is **DENIED** as moot.

**IT IS FURTHER ORDERED** that this action is **DISMISSED**, without prejudice, pursuant to 28 U.S.C. § 1915(g).

An Order of Dismissal shall accompany this Memorandum and Order.

Dated this 8th day of July, 2009.

  
UNITED STATES DISTRICT JUDGE